

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1204 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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VASANT CHIMANLALA DOSHI

Versus

DINESHKUMAR MOHANLAL BATUA  
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Appearance:

MR TV SHAH for Petitioner  
None present for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 15/02/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner and perused the impugned order and the application filed by defendant-respondent for second Panchnama. Translation of this application is there at page No.14 of the

compilation as annexure-C, which reads as under:

.... Defendant prays that:

Plaintiff has made panahnama in this suit through this Hon'ble Court. In this panchnama there is nothing mentioned about a crop of Gavar was taken in the suit land and nothing is mentioned about the well, which is in the suit land. This thing is possible to mention in the panchnama if panch is having knowledge of agriculture. The persons who have worked as a panch in panchnama, which was made on the applications of plaintiff, have no knowledge of agriculture hence we disagree with the panchnama and request to pass an order for fresh panchnama with the panchas who have knowledge of agriculture.

Palanpur, date 19.01.1999 (L.T.JAGANI)

Advocate for defendant

The translation of panchnama prepared by the Court Commissioner Mr.M.B.Parmar is there in the compilation at page No.12 as annexure-B. Both the defendants-respondents were given notice by the Court Commissioner but none of them remained present. This factual aspect is not controverted by defendants-respondents. When this panchnama prepared is not there in their favour they have found out this device to get other panchnama. This second panchnama is prayed for on the ground that the persons who were having knowledge of agriculture were not present. It is true that two persons who were there and called by the Commissioner were not agriculturists, but nevertheless, the defendants had not cared to remain personally present. For this their absence there is no explanation put forth and merely because now they have chosen to have second panchnama, the learned trial court could not have ordered it. Otherwise also, if we go by the order of the court, in fact, what the court is attempting is to get evidence in favour of defendants which is not the job of the court. The learend trial court has not referred the provisions of Order 6, Rule 10 of Civil Procedure Code, 1908. It is a clear case which falls under clause (c) of sub-section 1 of Section 115 of the Civil Procedure Code, 1908. In case, this order is allowed to stand, it will occasin failure of justice as the defendants will get evidence in their favour through Court Commissioner which is to be produced by him. Otherwise also, these are the facts on which the parties are to produce evidence. The Panchnama cannot be there for getting evidence for other parties.

#. In the result, thsi civil revision application succeeds and the same is allowed and the order of the Civil Judge (S.D.), Palanpur, below ex.19 passed in Special Civil Suit No.121 of 1998, is quashed and set aside. The application filed by defendants ex.19 is dismissed. As none put appearance for respondents, no order as to costs.

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[sunil]